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CRUCIBLE MATERIALS CORPORATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

ORANGE COUNTY WATER DISTRICT,

Plaintiff,

v.

NORTHROP CORPORATION; NORTHROP GRUMMAN CORPORATION; AMERICAN ELECTRONICS, INC.; MAG AEROSPACE INDUSTRIES, INC.; GULTON INDUSTRIES, INC.; MARK IV INDUSTRIES, INC.; EDO CORPORATION; AEROJET-GENERAL CORPORATION; MOORE BUSINESS FORMS, INC.; AC PRODUCTS, INC.; FULLERTON MANUFACTURING COMPANY; FULLERTON BUSINESS PARK LLC; and DOES 1 through 400, inclusive,

Defendants.

AND RELATED CROSS ACTIONS.

Case No.: 04CC00715

Assigned to Hon. Kim G. Dunning
Department CX104

DEFENDANT CRUCIBLE MATERIALS CORPORATION'S CLOSING BRIEF AND [PROPOSED]FINDINGS OF FACTS AND CONCLUSIONS OF LAW

Trial Date: February 10, 2012
Complaint Filed: December 17, 2004

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Defendant Crucible Materials Corporation ("CMC") hereby submits its Closing Brief and Proposed Findings of Fact and Conclusions of Law, as a supplement to the Defendants' Closing Trial Brief on Common Issues.

The above-entitled case came on regularly for trial before the Court on February 10, 2012 in Department CX-104, Judge Kim G. Dunning presiding. Plaintiff Orange County Water District (the "District") was represented by its counsel, Duane C. Miller and Michael D. Axline of Miller, Axline & Sawyer, and Edward Connor of Connor, Fletcher & Williams LLP. Defendant Crucible Materials Corporation was represented at the trial by its counsel, Paul D. Rasmussen of Dongell Lawrence Finney LLP. Prior to commencement of trial, the District's case was bifurcated such that the first phase of the trial involved the District's first cause of action for violation of the Orange County Water District Act (the "OCWD Act"), its second cause of action for violation of Health and Safety Code section 25363 ("HSAA"), and its sixth cause of action for declaratory relief.

The Court heard testimony of percipient and expert witnesses and received documents into evidence, including deposition testimony excerpts. The Court, having considered the evidence and heard the arguments of counsel, including the parties' briefs and all supporting documents, and having evaluated the demeanor and credibility of the witnesses, makes the following findings of facts and conclusions of law.

I. INTRODUCTION

Defendant Northrop, among others, filed a cross-complaint against CMC on or about August 19, 2005. Shortly thereafter, on or about November 2, 2005, the District filed an amendment to its First Amended Complaint substituting CMC for Doe 104. The District brought its claims against CMC without any evidence of releases of volatile organic compounds ("VOCs") to the groundwater at its former site at 2100 E Orangethorpe Avenue, Fullerton, California (the "Site," "Crucible Site" or "2100 E. Orangethorpe Site"). The District included the Site within its 2008 VOC plume map even though it had no groundwater data at or near the Site. It wasn't until early 2011 that the District, through its retained expert Dr. Waddell, conducted any groundwater sampling at or near the Site when it installed four one-time only

groundwater grab samples. Not only are these four samples inadequate to support a connection between the Site and downgradient groundwater contamination, the District failed to rebut strong evidence that the adjacent Vista Paint site is the likely source of the groundwater contamination.

The District's case against CMC is based entirely upon the four one-time groundwater grab samples taken in early 2011. However, these one-time sampling events, as opposed to the use of monitoring wells, are unreliable for purposes of adequately determining whether a site has impacted groundwater because:

(1) They are nothing more than a snapshot in time of groundwater conditions at a site;

(2) They are not reproducible;

(3) They are not indicative of past groundwater conditions or trends;

(4) They do not measure groundwater levels and flow at a site over time;

(5) They do not measure horizontal and vertical conditions at a site;

(6) They serve merely as a screening tool; and

(7) They are not accepted by California regulatory agencies as the sole method for determining whether a site has in fact impacted groundwater.

Three experts in this matter, including the District's causation expert, have opined that such one-time testing is of limited use and not helpful in detecting a pattern in groundwater quality.

After filing its claim against CMC in November 2005, the District had over six years to conduct a deep soil investigation at the Site and/or install groundwater monitoring wells at or near the Site in an effort to support its claims that the Site has impacted or threatens groundwater with VOC contamination, but it did not do so.

The California Department of Toxic Substances Control ("DTSC") and the Regional Water Quality Board ("RWQCB"), agencies charged with the protection of the environment and California's water resources, would not accept the results of a one-time groundwater sampling event to determine whether a site is impacting groundwater. In the face of multimillion dollar claim against CMC for groundwater cleanup, neither should this Court accept such speculative evidence.

In contrast to Dr. Waddell's conclusion based on insufficient evidence, the Toxic Substances Control Division of the California Department of Health Services ("DHS"), RWQCB, U.S. Environmental Protection Agency, Region IX ("US EPA"), and DTSC have all reviewed the Site and have concluded that the Site has not impacted groundwater. During closure of the Site, tetrachloroethylene ("PCE"), trichloroethylene ("TCE"), and 1,1,1-trichloroethane ("TCA") contamination was found in the shallow soil in the southern part of the Site. The contaminated soil was remediated in accordance with the regulatory oversight of the DHS, RWQCB, and the South Coast Air Quality Management District ("SCAQMD"). Since Site closure in 1985, further examination of the Site has been conducted by the US EPA and the DTSC. In 1991, the US EPA evaluated the Site for potential environmental response actions and determined that the Site was not a threat to human health or the environment. Between 2000 and 2005, DTSC requested further site investigation and soil testing, and ultimately concluded that the Site was not a threat to human health or groundwater.

Finally, even if soil contamination at the Site impacted groundwater at some point in time, there is no evidence that spills or releases of VOCs occurred during CMC's ownership and occupancy of the Site. CMC's ownership and occupancy of the Site began on October 3, 1983, and it ceased manufacturing operations approximately seven months later on May 11, 1984. Site closure was approved by DHS on April 16, 1985, and CMC's ownership and occupancy of the Site ended on May 17, 1985. All reliable evidence indicates that TCA was the only VOC at issue in this matter used at the Site during CMC's short time at the Site. There is no evidence that CMC spilled or released TCA at the Site during its ownership and occupancy of the Site.

For all of the reasons stated in this Brief and in the Defendants' Closing Trial Brief on Common Issues, CMC respectfully requests that this Court find in favor of CMC on the District's first, second, and sixth causes of action.

II. [PROPOSED] FINDINGS OF FACT REGARDING SITE HISTORY AND ENVIRONMENTAL INVESTIGATIONS

A. Ownership and Operational History of 2100 East Orangethorpe

On August 26, 1991, Coltec Industries Inc provided a summary of the ownership and operation history of the former Trent Tube facility located at 2100 East Orangethorpe Avenue, Fullerton, California to Ecology and Environment, Inc. (Ex. 11815), who at that time was preparing a RCRA Preliminary Assessment of the Site on behalf of the US EPA (Ex. 11816). Certain key events of this summary are reported below.

In the late 1950's, the Trent Tube Company purchased two adjoining parcels of real property on Orangethorpe Avenue in Fullerton, California. (Ex.11815-1). One parcel was recorded on March 18, 1957 and the other recorded on July 8, 1959. (Ex. 11815-1). The Fullerton facility was constructed shortly thereafter. (Ex. 11815-1).

In March 1963, the Trent Tube Company was merged into its parent corporation, Crucible Steel Corporation. (Ex. 11815-1). At that time, the Fullerton facility was engaged in producing electricweld, stainless, high alloy and titanium pipe and tubing. (Ex. 11815-2). Crucible Steel Corporation was acquired by Colt Industries Inc in 1968. (Ex. 11815-2).

On October 17, 1968, the Site was transferred to Cru Colt Corporation, a wholly-owned subsidiary of Crucible Steel Corporation. (Ex. 11815-2). The corporate name of Cru Colt Corporation was changed to Crucible Steel Corporation on October 18, 1968 and to Crucible Inc on February 14, 1969, and to Colt Industries Operating Corp on December 31, 1982. (Ex. 11815-2).

Crucible Materials Corporation was incorporated on September 12, 1983. (RJN, filed August 29, 2012). On October 3, 1983, Colt Industries Operating Corp transferred the Site to its wholly owned subsidiary, Crucible Materials Corporation. (Ex. 11815-2). On May 11, 1984, manufacturing operations at the Site ceased. (Ex. 11813-2). As of May 17, 1985, Crucible Materials Corporation transferred the Site to its parent corporation, Colt Industries Operating Corp. (Ex. 11815-2).

In November 1985, Colt Industries Operating Corp sold the Site to Howard K. Barlow. (Ex. 11815-2). Shortly thereafter in late 1985, La Barron Investments purchased the Site. (Ex. 11816-25). La Barron Investments has primarily used the Site for storage of recreational vehicles. (Ex. 11816-25; Ex. 11856:6).

B. Evidence of VOCs Use at 2100 E Orangethorpe

Trent Tube was in the business of conversion of large tubing into smaller tubing, primarily stainless steel tubing. (Murphy depo, 22:3-9). The reduced tubing was degreased with solvents. (Murphy, 30:24-31:14). The evidence indicates that in the 1964 through 1968 time frame the Trent Tube Co. stored TCE at the facility, was permitted to store and use PCE, and was permitted to use the facility's solvent degreaser. (Ex. 387A-1, 2; 4 and 5; Ex. 387B-1; Ex. 387C-1). During the 1980 to 1984 time frame, the facility used TCA for solvent vapor degreasing, stored unused TCA and waste TCA on site, and shipped waste TCA offsite for reclamation. (Ex. 388A; Ex. 11810-1, 2-6, 13, 14, 21 and 22).

Harry Murphy was the Quality Control Manager from 1969 to 1985 at the Site. (Murphy depo, 21:22-22:2; 23:8-14). Mr. Murphy was not aware of any spills of solvent in the area of the former degreasing pit, in the solvent storage area, or in the waste solvent storage area. (Murphy depo, 72:16-73:4; 160:20-161:6; 109:8-16). Nor was Mr. Murphy aware of any spills of solvent during the transfer of drums to the impound area (Murphy depo, 110:3-6), any spills of solvent in the area of the outside reservoir tank (Murphy depo, 160:2-15), or any leaking of solvent in the pipes between the reservoir tank and the degreasing pit (Murphy depo, 160:16-19) .

C. Environmental Investigations at 2100 E. Orangethorpe

1. 1984/1985 Site Closure by DHS, RWQCB and SCAQMD

On May 4, 1984, in a memorandum from the RWQCB to the DHS regarding the Trent Tube Closure Plan, the RWQCB stated: "We have, however, reviewed the plan and inspected the facility with respect to its impact on water quality. During the inspection, small areas of soil contaminated with waste oil were noted on the south side of the plant. Mr. Harry Murphy, Plant Manager, stated that soil in these areas will be removed to a depth of three feet during closure.

This is not included in the closure plan. With the above exception, no problems were noted during the inspection or in our review of the closure plan as submitted." (Ex. 11813-31).

On January 18, 1985, Calocerinos and Spina, on behalf of Trent Tube, submitted the results of its Site assessment activities and proposed remediation plan for the Site to the DHS. (Ex. 11813-72-78; Ex. 392 for completeness).

Soil samples were collected at 17 locations as part of Site assessment in late December 1984. (Ex. 11813-72; Ex. 11813-68 (figure); Ex. 409-80 (figure)). The A series, B series, C Series, and D Series sampling were conducted at 14 locations, and the soil was tested at depths of 3.5 feet, 5 feet and 10.5 feet. (Ex. 11813-72). The E series sampling was conducted at 3 background locations, and the soil was tested at depths of 2 feet, 4 feet and 6 feet. (Ex. 11813-72). The only soil contamination found above the allowable limit of 1 mg/kg (parts per million) was found at A-1 at 3.5 feet (TCA – 1.2 ppm; PCE – 1.1 ppm) and 10.5 feet (TCA – 1.5 ppm; PCE – 1.7 ppm), C-3 at 3.5 feet (TCA – 2.2 ppm; PCE – 5.3 ppm), and D-2 at 3.5 feet (TCA – 780 ppm; PCE – 21 ppm; TCE – 70 ppm). (Ex. 11813-73, 77-78).

The analytical results from the boring samples confirmed the presence of VOC contamination at low levels near the rear of the Trent Tube building and VOC contamination at a higher level near the back fence of the Trent Tube property adjacent to Vista Paint's solvent storage area. (Ex. 11813-8). Calocerinos and Spina proposed further remedial action, including excavation and transport off-site for disposal of contaminated soils in the vicinity of D-2 to a depth of 4.5 feet ("Area A") (Ex. 11813-75).

On February 11, 1985, 4 truckloads (57 cubic yards) of contaminated soil was excavated and transported off-site for disposal, pursuant to an Excavation Permit Narrative submitted to the SCAQMD. (Ex. 11813-9, 91-95, 104-108). On February 25, 26, and 27, 1985, 16 additional truckloads of contaminated soil was excavated and transported off-site for disposal. (Ex. 11813-10, 111-128). Soils from "Area B" at the Site, outside of the extended "Area A", were removed to the designated area east of the building and spread in a thin layer for aeration. (Ex. 11813-10). On February 28, 1985, 16 truckloads of clean fill material were backfilled into the excavated

hole and compacted. (Ex. 11813-10). On March 1, 1985, the aerated soil was removed from the aeration area and placed back in the excavation on top of the clean fill material. (Ex. 11813-10).

In March 1985, Calocerinos and Spina prepared and submitted a Facilities Closure Report to the DHS. (Ex. 11813). The Facilities Closure Report set forth a detailed description of Site closure activities, Site assessment, and Site remediation activities. (Ex. 11813). On April 16, 1985, DHS approved closure of the Site. (Ex. 11816-5, 12). In September 1986, the DHS conducted a post-closure inspection of the Site. (Ex. 11816-5, 12).

2. 1991 Site Review by US EPA

Ecology and Environment, Inc. was retained by the US EPA to prepare a RCRA Preliminary Assessment of the former Trent Tube Site, which was submitted on September 15, 1991. (Ex. 11816). The RCRA Preliminary Assessment was prepared as part of the US EPA's Environmental Priorities Initiative program in order to set priorities for cleanup of the most environmentally significant properties. (Ex. 11816-2). The RCRA Preliminary Assessment noted that no release of contaminants to the groundwater had been documented at the Site. (Ex. 11816-9). The RCRA Preliminary Assessment also noted that the National Contingency Plan authorized the US EPA to consider emergency response actions at those sites which pose an imminent threat to human health or the environment, and concluded there was no apparent need for a referral of the Site to US EPA's Emergency Response Section because all the known wastes had been removed from the Site. (Ex. 11816-10).

3. 2000-2005 Site Investigation and Closure by DTSC

In May 2000, the DTSC prepared a RCRA Facility Assessment for the former Trent Tube Site. (Ex. 397-18). The purpose of the RCRA Facility Assessment was to evaluate whether Trent Tube contributed to groundwater contamination, and whether soil residues were still contributing to groundwater. (Ex. 397-18). A groundwater investigation was recommended only if soil-vapor tests and/or soil analysis indicated the presence of VOC's in facility soils. (Ex. 397-18). On June 28, 2000, the DTSC transmitted the RCRA Facility Assessment for the Trent Tube Site to, among others, Trent Tube, La Barron Investments, Crucible Materials Corporation, US EPA, RWQCB, and the District. (Ex. 11852).

On December 27, 2001, the DTSC transmitted a Draft Corrective Action Consent Agreement for La Barron Investments regarding the former Trent Tube Site to, among others, La Barron Investments, RWQCB, and US EPA. (Ex. 11853). On June 12, 2002, the DTSC issued an Enforcement Order For Corrective Action to the owner of the former Trent Tube Site, La Barron Investments, copies of which were provided to RWQCB and US EPA. (Ex. 398).

On August 30, 2002, Frey Environmental prepared a RCRA Facility Investigation Workplan for the Site on behalf of La Barron Investments. (Ex. 11856). On October 4, 2002, Paul Carpenter, a certified hydrogeologist and engineering geologist in the Geologic Services Unit of the DTSC, drafted a memorandum containing his comments and recommendations after review of the RCRA Facility Investigation Workplan. (Ex. 11857).

On December 24, 2002, Frey Environmental submitted to the DTSC its Soil and Soil Vapor Assessment of the former Trent Tube Site performed on behalf of La Barron Investments. (Ex. 399). The stated objective of the work was to assess the presence of VOC's and selected metals in soil and VOCs in soil vapor beneath the Site. (Ex. 399-9).

VOCs were not detected above the laboratory detection limits of 5 ug/kg in soil samples from borings B1 through B4 and B18 through B20. (Ex. 399-18; Ex. 399-31 (figure)). The soil boring locations were agreed to by the DTSC. (Ex. 399-10). The B1 samples were collected at a depth of 2 feet, 10 feet, and 20 feet north of the former degreasing tank. (Ex. 399-24). The B2 samples were collected at a depth of 1 feet and 10 feet east of the former degreasing tank. (Ex. 399-24). The B3 samples were collected at a depth of 1 feet and 10 feet south of the former degreasing tank. (Ex. 399-24). The B4 samples were collected at a depth of 1 feet and 10 feet west of the former degreasing tank. (Ex. 399-24). The B18 sample was collected at a depth of 3 feet as a background sample on the northwestern portion of the Site. (Ex. 399-24). The B19 sample was collected at a depth of 3 feet as a background sample on the northeastern portion of the Site. (Ex. 399-25). The B20 sample was collected at a depth of 3 feet as a background sample on the southeastern portion of the Site. (Ex. 399-25).

Soil vapor sampling for VOCs was conducted at B1 and SV1 through SV8. (Ex. 399-16; Ex. 399-31 (figure)). The soil vapor sampling locations were agreed to by the DTSC. (Ex. 399-

10). The B1 samples were collected at a depth of 10 feet and 20 feet north of the former degreasing tank. (Ex. 399-23). The SV1 through SV4 samples were collected at a depth of 5 feet near the former waste storage area. (Ex. 399-23). The SV5 through SV8 samples were collected at a depth of 5 feet near the southern property line. (Ex. 399-23). Frey Environmental concluded that relatively low concentrations of VOC's were detected in the soil vapor samples, with the exception of SV8 which was non-detect. (Ex. 399-18, 19 and 23).

On January 15, 2003, DTSC's staff certified hydrogeologist, drafted a memorandum containing his comments and recommendations after review of the Soil and Soil Vapor Assessment. (Ex. 11860). On March 20, 2003, the DTSC transmitted correspondence to La Barron Investments regarding its comments and request for an amendment to the RCRA Facility Investigation Workplan. (Ex. 11862).

On April 25, 2003, Frey Environmental submitted to the DSTC its addendum to the RCRA Facility Investigation Workplan to address the further assessment of VOC's previously detected beneath the Site. (Ex. 11863). On May 8, 2003, DTSC's staff certified hydrogeologist, drafted a memorandum containing his additional comments and recommendations after review of the RCRA Facility Investigation Workplan Addendum. (Ex. 11864). On May 19, 2003, Frey Environmental submitted to the DSTC its response to the May 8, 2003 comments from DTSC. (Ex. 11865).

On July 23, 2003, Frey Environmental submitted to the DTSC its Additional Soil Vapor Assessment of the former Trent Tube Site performed on behalf of La Barron Investments. (Ex. 400). The stated objective of the work was to assess the lateral and vertical extent of VOC's in soil vapor beneath the Site. (Ex. 400-10). Soil vapor sampling for VOCs was conducted at SV9 through SV20. (Ex. 400-10; Trial Ex. 400-29 (figure)). The soil vapor sampling locations were agreed to by the DTSC. (Ex. 400-10). Soil vapor samples were collected at 5 feet at SV9 through SV13 to laterally assess contamination of VOC's previously detected at SV1 through SV7. (Ex. 400-11). Soil vapor samples were collected at depths of 10, 20, and 30 feet at SV14 and SV15 to vertically assess contamination of VOC's previously detected at SV1 and SV3. (Ex. 400-11). Soil vapor samples were collected at a depth of 40 feet at SV16 to vertically assess

contamination of VOC's previously detected at B1. (Ex. 400-11). Soil vapor samples were collected at depths of 10, 20, and 40 feet at SV17 through SV20 to laterally and vertically assess contamination of VOC's previously detected at B1. (Ex. 400-11). The soil vapor sample at SV15 at 30 feet was non-detect for VOCs. (Ex. 400-25). The soil vapor samples at SV16 through SV20 at 40 feet were non-detect for VOCs. (Ex. 400-25). Frey Environmental concluded that the lateral and vertical extent of VOC's had been adequately assessed. (Ex. 400-15). Frey Environmental recommended that no further action be required for the Site because "the low concentrations of VOCs where present beneath the Site, do not present a threat to human health or groundwater beneath the Site." (Ex. 400-16).

On August 19, 2003, Kimiko Klein, a staff toxicologist in the Human and Ecological Risk Division of the DTSC, drafted a memorandum containing comments and conclusions after review of the July 23, 2003, Additional Soil Vapor Assessment. (Ex. 11867). On September 9, 2003, the DTSC transmitted correspondence to La Barron Investments regarding its comments and request a revised RCRA Facility Investigation Report to address prior comments of the Human and Ecological Risk Division of the DTSC. (Ex. 11862).

On October 8, 2003, Frey Environmental submitted to the DTSC its Revised Additional Soil Vapor Assessment of the former Trent Tube Site performed on behalf of La Barron Investments. (Ex. 11869). Frey Environmental again recommended that no further action be required for the Site because "the low concentrations of VOCs where present beneath the Site, do not present a threat to human health or groundwater beneath the Site." (Ex. 11869-16).

On July 8, 2005, the DTSC approved the Revised RCRA Facility Investigation Report for the Site, which concluded no further investigation was necessary. (Ex. 401).

4. 2011 Soil & Groundwater Investigation by District's Counsel's Consultant

All of the preceding investigation and sampling events were conducted according to and/or in support of submissions to the regulatory agencies. The sampling on which Dr. Waddell bases his opinions, however, was performed solely for purposes of this litigation. Environmental Support Technologies performed soil and groundwater sampling for District's counsel, Miller,

Axline & Sawyer, regarding the Crucible Site and the Vista Paint Site in early 2011. (Ex. 406-1) The sampling was not conducted at the Crucible Site, but rather at 1850 East Orangethorpe, 2020 East Orangethorpe, and 2230 East Orangethorpe. (Ex. 406-1). The District's expert Dr. Waddell recommended the locations of the sampling. (RT 5/17/12, 3005:7-11).

Sampling points CM-GW01/01A were at Pete's Road Service, 2230 East Orangethorpe, located approximately 400 feet east of the center of the building on the Site. (Ex. 406-1, 7, and 9). Sampling points CM-GW02/02A were on the Vista Paint Site, 2020 E. Orangethorpe, located on the center portion of the property between the Vista Paint building and the former Crucible building. (Ex. 406-1, 7, and 9). Sampling point CM-GW03 was on the Vista Paint Site, 2020 E. Orangethorpe, located on the southern portion of the property between the Vista Paint building and the former Crucible building. (Ex. 406-1, 7, and 9). Sampling point CM-GW03A was on the Vista Paint Site, 2020 E. Orangethorpe, located south of the former Crucible building in the chemical drum storage area of the Vista Paint Site. (Ex. 406-1, 7, and 9). Sampling points CM-GW04/04A were at Liquidation Service, 1850 East Orangethorpe, located approximately 400 feet east of the eastern portion of the building on the Vista Paint Site. (Ex. 406-1, 7, and 9).

The soil sampling results at CM-GW01, CM-GW02, CM-GW03, CM-GW04 were primarily non-detect for VOCs throughout the soil column except for at depths located in or immediately adjacent to perched groundwater. (Ex. 406-7; Ex. 10147-230). Perched groundwater was encountered at CM-GW01, CM-GW02, CM-GW03, CM-GW04 at levels between 80 and 72 feet below the ground surface, where VOCs were detected in the perched groundwater. (Ex. 10147-230). Shallow groundwater was encountered at CM-GW01A, CM-GW02A, CM-GW03A, CM-GW04A at levels between 124 and 123 feet below the ground surface, where all VOCs encountered were either non-detect or below their respective maximum contaminant level ("MCL") or notification level. (Ex. 10147-230).

III. ADDITIONAL [PROPOSED] FINDINGS OF FACT AND ARGUMENTS IN SUPPORT OF JUDGMENT IN FAVOR OF CMC ON THE DISTRICT'S FIRST, SECOND, AND SIXTH CAUSES OF ACTION

The District's case against CMC on the issue whether VOCs from 2100 E. Orangethorpe impacted groundwater relies principally upon the testimony of its hydrogeology expert Dr. Waddell. Dr. Waddell, however, lacked sufficient experience and groundwater data to support a credible opinion that the 2100 E. Orangethorpe Site has contaminated the groundwater. Moreover, Dr. Waddell failed to rebut strong evidence that the adjacent Vista Paint Site is the source of the groundwater contamination.

Throughout his testimony, Dr. Waddell seemed unable to testify without leading questions from the District's counsel and reliance on PowerPoint presentations and "demonstrative" exhibits contained therein. The Court admonished the District's counsel several times during the trial that the excessive use of leading questions would affect Dr. Waddell's credibility with the Court. (RT 5/7/12, 2327:19-2328:2). Too often, it appeared that the District's counsel, rather than Dr. Waddell, was actually testifying. The manner in which Dr. Waddell's testimony was presented reflects that he lacked the expertise and data necessary to support his opinions.

Dr. Waddell offered opinions that the VOCs in the soil at the Site have the ability to serve as a continuing source to groundwater at the Site. (RT 4/26/12, 1609:22-25). Dr. Waddell's opinion was not, however, based on experience in evaluating sites for soil contamination. Dr. Waddell has never conducted an evaluation of a client-owned site to determine whether the site was contaminated. (RT 5/17/12, 3032:1-3032:5). Dr. Waddell has never provided a client advice on the meaning of a non-detect in a soil sample. (RT 5/17/12, 3032:16-3032:19). Dr. Waddell has never performed, supervised, or directed tests to identify the presence of dense nonaqueous phase liquid ("DNAPL"). (RT 5/17/12, 3032:23-3033:1). Dr. Waddell is not aware if there is a standard practice in the environmental consulting community that is used to delineate the extent of contamination is soil. (RT 5/17/12, 3033:17-3033:21).

A. The One-Time Groundwater Grab Samples Taken in Early 2011 Are Not Reliable for Determining Whether 2100 E. Orangethorpe Has Impacted Groundwater

CMC's expert, Dr. Kopania, opined that the four testing locations from early 2011 where one time groundwater grab samples were collected represent screening data, but, as opposed to the use of monitoring wells, is unreliable for purposes of adequately determining whether a site has impacted groundwater. (RT 8/13/12, 6756:11-14). Dr. Waddell and Northrop's Expert Mr. Tofani also concurred in Dr. Kopania's opinion. This opinion is based on a variety of reasons:

- They are nothing more than a snapshot in time of groundwater conditions at a site; (RT 4/9/12, 656:6-656:8; RT 4/12/12, 815:22-816:6)
- They are not reproducible; (RT 8/13/12, 6771:12-19)
- They are not indicative of past groundwater conditions or trends; (RT 8/13/12, 6772:17-22)
- They do not measure groundwater levels and flow at a site over time; (RT, 5/17/12 3016:18-21; RT, 7/27/12; 5361:21024)
- They do not measure horizontal and vertical conditions at a site; (RT 5/17/12, 3016:22-26; RT 7/27/12, 5361:25-5362:2)
- They serve merely as a screening tool; and (RT 7/27/12, 5362:3-7)
- They are not accepted by California regulatory agencies as the sole method for determining whether a site has in fact impacted groundwater. (RT 8/13/12, 6772:10-16; RT 7/27/12, 5362:8-13).

Dr. Waddell lack of experience was further evident when he admitted that he didn't even know if regulatory agencies in California would accept one time grab samples as opposed to monitoring wells for purposes of site characterization. (RT 5/17/12, 3017:4-9).

Since the District filed its claim against CMC in November 2005, it has had over six years to install at least one or more groundwater monitoring wells at the Site in an effort to adequately characterize whether in its view the Site has impacted or threatens groundwater with VOC contamination, but has chosen not to do so. Rather, the District relies on four one-time

groundwater grab samples, none of which were located on the Site, to try to establish liability against CMC. (Ex. 406-1). Accordingly, these one-time samples are inadequate to support a claim that there is a connection between the Site and downgradient groundwater contamination.

B. <u>There Is No Evidence Concerning Spills or Releases of VOCs During CMC's Ownership and Occupancy of 2100 E. Orangethorpe</u>

The record is devoid of evidence describing when, how, or what quantity of solvents were spilled at the Site. The only evidence that spills or releases of VOCs occurred at the Site was the presence of limited areas of VOC-contaminated soil, which CMC removed from the property. The presence of some soil contamination at the Site, however, does not prove that any of the VOCs were released during CMC's ownership and occupancy.

CMC's ownership and occupancy began when the Site was transferred to CMC on October 3, 1983. (Ex. 11815-2). CMC ceased manufacturing operations approximately seven months later on May 11, 1984. (Ex. 11813-2). CMC's ownership and occupancy of the Site ended on May 17, 1985. (Ex. 11815-2). During this time period, CMC used TCA in a degreaser unit having a maximum capacity of 2400 gallons, and waste TCA was contained in a maximum of 15 55 gallon drums was present at the Site. (Ex. 11811-3). After manufacturing ceased, on May 23, 1984, 3,000 gallons of TCA and oils from the former Site were disposed off-site, and on May 30, 1984, 145 gallons of TCA and oils from the Site were disposed off-site. (Ex. 11813-6). Site closure was approved by DHS on April 16, 1985. (Ex. 11816-5, 12).

There is no evidence that solvents were released to the Site during CMC's ownership and operation. Consequently, Dr. Waddell admitted that he did not have an opinion as to whether any solvents released at the Site between October 1983 and May 1984 have affected groundwater. (RT 5/17/12, 3017:4-9.)

C. <u>No Regulatory Agency That Has Reviewed 2100 E. Orangethorpe Has Concluded 2100 E. Orangethorpe Impacted Groundwater</u>

Four state or federal environmental regulatory agencies, the DHS, RWQCB, US EPA, and DTSC, have reviewed the Site, and not one of them has concluded that the Site has impacted groundwater. In fact, after reviewing the Site's history of solvent use, the Site investigation

activities, and all of the relevant soil and soil gas data, no regulatory agency has recommended or requested any further remediation activities such as soil vapor extraction be undertaken, let alone any groundwater investigation. Dr. Waddell admitted that none of the regulatory agencies that reviewed the Site, required a groundwater investigation at the Site. (RT, 5/17/12 3026:13-18). In contrast, Dr. Waddell, who lacks experience in evaluating sites for possible soil contamination, is the only person of record claiming the Site has impacted groundwater.

Moreover, Dr. Waddell's opinion regarding the results of the RCRA Facility Investigation conducted under the oversight of the DTSC in 2000-2005 is misleading and not supported by the facts. Preliminarily, Dr. Waddell is incorrect in stating that Crucible conducted the RCRA Facility Investigation. (RT 4/26/12, 1601:9-18). The investigation was conducted by the owner of the Site at the time La Barron Investments. (Ex. 11856). Dr. Waddell opined that the DTSC concluded that the VOCs remaining in soil did not pose a risk to people from exposure to gasses, but that the DTSC did not review whether the Site was contaminating groundwater. (RT 4/26/12, 1601:9-1602:16). The second half of his opinion is incorrect. The Soil and Soil Vapor Assessment reports submitted to the DTSC by Frey Environmental were reviewed by a staff Certified Hydrogeologist in the Geologic Services Unit of the DTSC. (See Ex. 11860, 11864). The October 7, 2003 Revised Additional Soil Vapor Assessment from Frey Environmental recommended that no further action be required for the Site because "the low concentrations of VOCs where present beneath the Site, do not present a threat to human health or groundwater beneath the Site." (Ex. 11869-16). In response, the DTSC approved the Revised RCRA Facility Investigation Report for the Site, which concluded no further investigation was necessary. (Ex. 401).

D. <u>All Soil and Soil Data at 2100 E. Orangethorpe Show at Most Minimal Impacts Contained to the Shallow Soil</u>

Dr. Waddell offered opinions that the VOCs in the soil at the Site have the ability to serve as a continuing source to groundwater at the Site. (RT 4/26/12, 1609:22-25). This opinion is not supported by the available soil and soil gas data generated at the Site, which shows only residual VOC contamination in the shallow soil without a connection to groundwater. Dr. Kopania,

opined that there is no evidence VOC releases from the Site have impacted groundwater. (RT 8/13/12, 6755:22-24). Unlike Dr. Waddell, Dr. Kopania is a registered Professional Geologist and Certified Hydrogeologist in California with many years of experience at hundreds of environmental contamination sites. (RT 4/26/12, 6752: 7-6754:15; Ex. 27000).

The primary reason for Dr. Kopania's opinion is that the soil and soil gas data from the Site do not show any connection between VOCs in the shallow soil and the underlying groundwater. (RT 8/13/12, 6756:4-6). Dr. Kopania reviewed the 1984 soil data from the Site and found that the concentrations are not representative of DNAPL at the Site, and the presence of VOCs is limited and does not extend to depth. (RT 8/13/12, 6757:5-15). In addition, soil excavation occurred on the south part of the Site, south of the building to remove the VOCs detected in the shallow soils. (RT 8/13/12, 6762:21-6763:2). Lastly, DHS issued a closure for the Site. (RT 8/13/12, 6762:14-20).

Later, DTSC conducted a RCRA Facility Assessment to evaluate the potential for VOCs from the Site to have impacted groundwater. (RT 8/13/12, 6763:14-18). Dr. Kopania reviewed the soil data from 2002, which does not indicate the presence of VOCs in the shallow soil. (RT 8/13/12, 6763:19-23). Dr. Kopania reviewed the soil gas data from 2002, which was consistent with a shallow release of VOCs, but not a deep migration of those VOCs, and the concentrations were not consistent with the presence of a DNAPL or a residual large mass of VOC contamination in the soil. (RT 8/13/12, 6765:22-6766:2). Dr. Kopania reviewed the soil gas data from 2003, which was consistent with the 2002 data in that there were only shallow relatively low VOC concentrations and no consistent detections deeper to groundwater. (RT 8/13/12, 6766:19-24).

Dr. Kopania opined that the soil and soil gas data at the Site are not consistent with a presence of a larger residual mass or DNAPL at the Site, and that there are no consistent detections between the shallow soil and perched groundwater. (RT 8/13/12, 6768:19-6769:5). Also, Dr. Kopania opined that there is no sampling data between the perched zone and the shallow aquifer. (RT 8/13/12, 6791:26-6792:4).

Dr. Waddell acknowledged that the SV16, SV17, SV118, SV19 and SV20 soil vapor sampling points encircle the former degreaser on the Site. (RT 5/17/12, 3001:1-6). SV18 is the western most soil vapor sampling point from the degreaser on the Site. (RT 5/17/12 3001:7-10). Dr. Waddell further acknowledged that SV16, SV17, SV118, SV19 and SV20 are the deepest soil gas sampling points at the Site at 40 feet below ground surface, and they were all non-detect for TCE, PCE, 1,1-dichloroethane ("1,1-DCE"), and TCA. (RT, 5/17/12 3001:20-3002:6). Once again, the data regarding non-detects in shallow soil runs contrary to Dr. Waddell's opinions that soil contamination at the Site is impacting groundwater.

Dr. Waddell opined that the VOC detections in soil at CMGW-01 at 70 feet, at CMGW-02 at 60 and 70 feet, at CMGW-03 and 70 and 80 feet, and CMGW-04 at 80 feet were affected by the VOC contamination found in the perched groundwater at those depths. (RT, 5/17/12 3003:3-3005:1). Accordingly, Dr. Waddell acknowledged that at least based on the available data, VOC contamination is not from conditions in shallow soil at that those locations, but rather from the perched water, which again runs contrary to Dr. Waddell's opinions that soil contamination at the Site is impacting groundwater.

E. <u>The Vista Paint Site Is a Source of Contamination Found in Soil and Groundwater</u>

The Vista Paint Site is a site that Dr. Waddell reviewed in preparing his expert report and opinions. (RT 5/17/12, 2991:6-8). Dr. Waddell agreed that information in depositions or discovery responses that referenced types of solvents used, volumes of solvents used, and locations of solvent use, and references to spills is the type of information, when available, that he relied in preparing his opinions in this matter. (RT 5/17/12, 2990:25-2991:5). Dr. Waddell admitted that his expert report regarding the Vista Paint Site contained no references to discovery responses from Vista Paint, documents from Vista Paint or depositions of Vista Paint employees. (RT 5/17/12, 2991:13-2992:16).

Evidence admitted in this matter regarding Vista Paint that could have been provided by the District to Dr. Waddell includes, in part, the following[1] regarding Vista Paint's use of a large quantity of TCA in the early 1990s. John Long testified that Vista Paint used approximately 6,000 pounds of TCA annually (400-500 gallons) between 1989-1993 as a paint additive. (Ex. 23755 at p. 12 (Long Depo. at 28:6-18); p.16 (Long Depo. at 32:18-22); p. 11 (Long Depo. at 27:12-17), p. 12 (Long Depo. at 28:6-14).) A 1990 physical inventory reflects that Vista Paint stored 5,848 pounds of TCA on-site. (Ex. 11369-1.) A November 15, 1991 chemical inventory list reflects 385 gallons of TCA located "outside building southeast of drum lot." (Ex. 11371-6.) Long further testified that Vista Paint stored its TCA in an open area without a cover. (Ex. 23755, 40:8-13.)

Accordingly, because the District did not provide evidence regarding the use of TCA by Vista Paint to Dr. Waddell in preparation for forming his opinions, it diminishes the credibility of his analysis of the Vista Paint Site and his ultimate opinions regarding CMC.

1. Vista Paint is a Source of TCA Contamination and a Likely Source of PCE and TCE Contamination in Soil

Dr. Waddell generally discounted or ignored the shallow soil vapor data on the Vista Paint Site as part of his expert analysis. Dr. Kopania, however, took into consideration Vista Paint's use of TCA. (RT 5/17/12, 6774:10-11; 6781:12-24). Vista Paint stored drums of solvent on its section of property south of the Crucible Site. (RT 4/26/12, 1595:25-1596:5; RT 8/13/12, 6762:5-12; Ex. 409-80). Soil vapor sampling was conducted in 2009 in 12 locations outside of the Vista Paint building. (RT 5/17/12, 2993:22-2992:16; Ex. 726ll-1-3; Ex 10154-41). Dr. Waddell opined that soil gas sampling results for TCA and DCE on the west side of the Vista Paint building suggest releases of TCA to the soil in the area of VP-11 and VP-12. (RT 5/17/12, 2994:6-13, 2998:13-17; Ex. 10154-41; Ex. 726ll 1-3). However, he did not make similar conclusions about the east side, closest to the former Crucible Site.

[1] The Defendants Closing Brief on Common Issues discusses the Vista Paint Site in even greater detail at 53:27-54:9 and is hereby incorporated by reference.

On cross-examination, Dr. Waddell admitted he could not also rule out a release of TCA on the east side of the Vista Building based on the results of VP-4. (RT 5/17/12, 2998:18-26). Further, Dr. Waddell also acknowledged that the soil gas data at VP-4 for TCA, DCE, PCE and TCE increases at depth reaching 40 feet below ground surface. (RT 5/17/12, 2999:22-24). VP-4 is the closest sampling point on the Vista Paint Site to the former degreaser on the Crucible Site. (RT 5/17/12, 3000:5-9). SV18 is the western most soil vapor sampling point from the degreaser on the Crucible Site. (RT 5/17/12, 3001:7-10). Unlike VP-4 at 40 feet, SV18 at the Crucible Site at 40 feet below ground surface was non-detect for TCE, PCE, DCE, and TCA. (RT, 5/17/12 3001:20-3002:6).

Dr. Kopania opined that PCE was released at the Vista Paint Site based on soil gas data collected around the Vista Paint building in 2009. (RT 5/17/12, 6811:20). During rebuttal Dr. Waddell admitted that in his experience, even in the absence of a known use of a particular solvent at a site, the site could be a source of the solvent contamination based on detections in shallow soil. (RT 8/27/12, 7485:2-12). TCA, DCE, PCE and TCE are all found in shallow soil around the outside of the Vista Paint building based on the 2009 soil vapor sampling conducted at the Vista Paint Site. (Ex. 726ll-1-3; Ex 10154-41).

2. Groundwater Flow in the Perched Zone in the Vicinity of the Vista Paint Site and 2100 E. Orange Thorpe is from West to East, Implicating Vista Paint as the Likely Source of the VOC Groundwater Contamination in the Shallow Aquifer

Dr. Kopania analyzed the one-time sampling data in order to be able to evaluate and respond to Dr. Waddell's opinions. (RT 8/13/12, 6772:23-6773:3). Perhaps the most significant error committed by Dr. Waddell concerning his opinions regarding the former Crucible Site was assuming that groundwater in the perched zone flowed from east to west as it does in the shallow aquifer.

Dr. Waddell opined that Vista Paint was the most likely source of the detection of 685 ug/l for 1,4-Dioxane in CM-GW01 in the perched groundwater. (RT 4/26/12, 1612:16-1613:5). Dr. Kopania also opined that the 1,4-Dioxane found in the perched groundwater at CM-GW04 is

from Vista Paint Site. (RT 8/13/12, 6780:25-6781:1). In addition, Dr. Kopania agreed with Dr. Waddell's opinions based on the known use of 1,4-Dioxane at Vista Paint and that 1,4-Dioxane could have also been formed from the breakdown of ethylene glycol. (RT 8/13/12, 6781:2-8). However, Dr. Waddell prematurely concluded that Crucible was the source of the TCA, DCE, PCE, and TCE found in the perched groundwater in CM-GW01, CMGW02, CM-GW03 and CM-GW04.

Dr. Waddell considered CMGW-01/01A to be upgradient from the Crucible Site and CMGW-04/04A to be downgradient from the Vista Site. (RT 5/17/12, 3007:7-21). On cross-examination, Dr. Waddell acknowledged that the south side of the former Crucible Site was used by Vista Paint as a drum storage area. (RT, 5/17/12 3006:26-3007:22). As a result, Dr. Waddell changed his opinion from CMGW03/03A being upgradient of the Vista Paint to it being upgradient of the former Vista Paint building, but downgradient of the Vista Paint storage area. (RT 5/17/12, 3007:26-3008:6). Further, Dr. Waddell admitted that based on his opinion that the VOCs found in the perched groundwater at CMGW-01 was from the former Crucible Site that at least in the perched zone, groundwater flows east from CMGW-02 and CMGW-03 to CMGW-01 (RT 5/17/12, 3010:1-17).

Dr. Kopania opined that the flow direction in the perched zone is west to east based on his review of the water level data in the boring logs. (RT 8/13/12, 6774:11-14). Based on the 2011 data groundwater data, which contained the depth at which water was stabilized at each of the temporary wells in the perched zone, and groundwater surface elevation, Dr. Kopania was able to determine that the groundwater elevations at the sample to the west at CM-GW-04 was higher than the samples to the east indicating a general flow direction toward the east. (RT 8/13/12, 6782:7-25; Ex. 27013).

On rebuttal, Dr. Waddell agreed with Dr. Kopania's opinion that water in the perched zone flowed from west to east at the time of sampling in 2011. (RT 8/27/12, 7450:11-7451:3; 7452:7-11). However, Dr. Waddell opined that the dominant direction of flow is from west to east. (RT 8/27/12, 7452:5-6; 7451:2-3). When challenged for the basis of that opinion, Dr. Waddell admitted he was not aware of any data in the vicinity of the Crucible and Vista Paint

sites other than the early 2011 one-time hydro punches concerning groundwater flow in the perched zone. (RT 8/27/12, 7484:23-7485:1).

Dr. Kopania opined that the VOC contamination found in the shallow aquifer is from the Vista Paint Site. (RT 8/13/12, 6774:1-3). 1,4-Dioxane is present in groundwater samples at a concentration that is higher than seen as a solvent stabilizer for TCA. (RT 8/13/12, 6774:6-9; 6775:2-9; Ex. 27004; Ex. 27003; Ex. 27002; Ex. 20001). Dr. Kopania also analyzed the ratios of DCE contamination, which in his opinion demonstrated that the contamination at CM-GW02A and CM-GW03A in shallow groundwater is more similar to the sample from CM-GW04 in the perched zone than the samples immediately above CM-GW02A and CM-GW03A in the perched zone. (RT 8/13/12, 6774:15-20; 6786:26-6787:5; Ex. 27004; Ex. 27003; Ex. 27002).

F. Downgradient Wells Do Not Indicate that 2100 E. Orangethorpe is the Source of VOC Contamination in the Shallow Aquifer

Dr. Kopania opined that the VOC contamination observed under the Vista Paint and the former Crucible Site in the shallow aquifer has not migrated to downgradient wells. (RT 8/13/12, 6792:5-12). Dr. Kopania bases his opinion on wells MW-23 and MW-24S. (RT 8/13/12, 6792:13-162).

Dr. Kopania observed that MW-23 is not on the flow path from the Crucible Site, the chemistry at MW-23 is highly variable and the TCA is in proportions that indicate a nearby source other than the Crucible Site. (RT 8/13/12, 6792:17-25). Dr. Kopania evaluated the PCE plume from AC Products as a good-indicator of long-term groundwater flow in the area, and he noted that it goes right under the Crucible Site, but is passing to the north of MW-23. (RT 8/13/12, 6794:3-26; Ex 408-7). Dr. Kopania also analyzed the data from MW-23 and plotted it on graphs. (RT 8/13/12, 6795:1-11; Ex. 27010; Ex 27005). Dr. Kopania found the data to be variable over time and not consistent with a long-term source, and the relatively high proportion of TCA in the 2000 period suggested a near or young source to MW-23. (RT 8/13/12, 6797:26-6798:16).

Dr. Kopania observed that the chemistry at MW-24S is variable over time and does not show a consistent contribution from any one source. (RT 8/13/12, 6800:1-3). Dr. Kopania

opined that the DCE concentration measured at MW-24S is greater than that measured adjacent to the Crucible Site, which indicates other sources. (RT 8/13/12, 6800:7-10) Dr. Kopania analyzed the data from MW-24S and plotted it on graphs. (RT 8/13/12, 6800:11-20; 6801:18-20; Ex. 27010; Ex 27006). Dr. Kopania found that the chemicals in MW-24S are not from the Crucible Site based on the relationships between the different patterns and the absolute concentrations, and which chemicals appear over time. (RT 8/13/12, 6802:20-6803:1)

Dr. Kopania concluded that the concentrations and presence of TCA in some of the downgradient wells and the concentrations and proportions of other VOCs indicate sources affecting those wells other than the Crucible Site. (RT 8/13/12, 6809:14-19). On rebuttal, Dr. Waddell agreed with Dr. Kopania's opinions that there was a lot of variability in the water samples from MW-23 and MW-24S and the proportions and concentrations of the various COCs. (RT 8/13/12, 7457:16-20).

While discussing upgradient sources of TCA relative to the EMD Site, Northrop expert Mr. Tofani testified that Dr. Waddell identified a source of TCA in the vicinity of the Crucible Site. (RT 7/26/12, 5327:10-21). Mr. Tofani testified that the District collected and analyzed groundwater samples in that area in 2011 and that they indicated the ongoing presence of TCA in the groundwater at that location. (RT 7/26/12, 5327:22-5328:3). However, on cross-examination, Mr. Tofani admitted that the four groundwater grab samples in the shallow aquifer from early 2011 in the vicinity of the Crucible and Vista Sites were all non-detect for TCA. (RT 7/27/12, 5360:15-17; 5361:6-9; Ex. 27009).

G. VOC Groundwater Contamination From the AC Products' Site Flows Under 2100 E. Orangethorpe

On January 25, 2000, Harding Lawson Associates, on behalf of AC Products issued its Downgradient Investigation Report to the RWQCB. (Trial Ex. 408). Harding Lawson Associates concluded that the westerly groundwater flow direction for the AC Products' project monitoring well in December 1999 was consistent with previous monitoring events. (Trial Ex. 408-3). On Plate 3, Harding Lawson Associates' drew a contour of PCE greater than 100 ug/l between S. State College Boulevard and S. Placentia Ave to the east of the former Crucible Site,

extending to the north of the former Crucible Site at E. Orangethorpe Avenue, extending south of the former Crucible Site to Carbon Creek, and extending west to S. Acacia Avenue. (Trial Ex. 408-7). Harding Lawson Associates further concluded that the proposed extraction well (P-03) west of Manhattan Avenue was properly sited to capture VOCs in groundwater at the downgradient edge of the AC Products' plume. (Trial Ex. 408-4, 7).

Dr. Kopania opined that the PCE found in the shallow aquifer under the former Crucible Site is coming from AC Products. (RT 8/13/12, 6853:9-15). Dr. Waddell opined that some of the groundwater coming from under the Crucible Site has been treated by AC Products at its extraction well P-03. (RT 4/26/12, 1633:21-1634:2).

H. <u>There Is No Contamination From Under 2100 E. Orangethorpe That Meets the Remediation Objective for EW-4</u>

The District's extraction wells were designed to be located to capture areas of greatest future threat. (Ex. 708, Section 3-2). Thus, the project was designed to have extraction wells located and operated in capture areas where VOC concentrations exceeded ten times MCLs, except for EW-4, which was to be located in an area where VOC concentrations were greater than five times MCLs. (*Id.*; RT 2079:10-16).

Dr. Waddell in his expert report concluded that only EW-4 would capture groundwater potentially impacted by the 2100 E. Orangethorpe Site. (RT, 5/17/12 3029:11-18). Dr. Fogg's particle tracking map shows a hypothetical flow path of TCE from the 2100 E. Orangethorpe Site directly to EW-4. (Ex. 10000-43).

It is indisputable that EW-4 fails to meet its remediation objective with regard to any contamination arguably coming from the 2100 E. Orangethorpe Site. The groundwater results in CMGW-01A, CMGW-02A, CMGW-03A, and CMGW-04A were all non-detect for TCA, below 5 parts per billion for PCE and TCE, below on average 6 parts per billion for DCE, and below the notification level for 1,4-Dioxane. (RT 5/17/12, 3014:18-3015:6-14; Ex. 10147-230).

Even if this Court were to find that CMC was responsible for the groundwater contamination under the 2100 E. Orangethorpe Site, the PCE, TCE, and DCE are all below the MCL and the 1,4-Dioxane is below the notification level. Thus, any contamination from CMC

would be below the District's stated goal of capturing VOC contamination of 5 times MCL at the downgradient extraction well, EW-4.

I. The District Has No Evidence of Groundwater Contamination Above the MCL Under 2100 E. Orangethorpe In 2005, 2008 and 2011

The District brought its claims in 2005 against CMC without any evidence of releases of VOCs to the groundwater at the Site.

David Mark, the District's Project Manager for the North Basin Groundwater Protection Project (RT 5/3/12, 2006:21-24) prepared the District's 2008 Composite VOC Plume Map. (RT 5/3/12, 2102:17-19). The Crucible Site is located in the District's 2008 Composite VOC Plume Map in a light blue plume, which the District contends represents an area where PCE, TCE, and 1,1-DCE concentrations are in range of exceeding the MCL for drinking water up to 5 times the MCL. (Ex. 695-1). This depiction of this portion of the plume and the Crucible Site is pure speculation. Mr. Mark admitted that at the time he prepared the District's 2008 Composite VOC Plume Map, he did not have any groundwater data at or immediately adjacent to the Crucible Site. (RT 5/8/12, 2531:24-2532:2). Mr. Mark admitted that the nearest groundwater data where either TCE, PCE, or 1,1-DCE exceeded the MCL was approximately 2400 feet downgradient from the Crucible Site at MW-24S. (RT 5/8/12, 2532:2-21). Lastly, Mr. Mark admitted that at the time he prepared the District's 2008 Composite VOC Plume Map, he did not know whether or not the groundwater contamination under the Crucible Site was greater than the MCL for TCE, PCE, or 1,1-DCE. (RT. 5/8/12, 2531:24-2532:2).

In 2011, the District elected not to conduct a groundwater investigation under the Crucible Site, but rather at neighboring properties. Even considering these one time sampling results, the PCE, TCE, and DCE are all below the MCL and the 1,4-Dioxane is below the notification level.

At no time since 2005 to the present has the District furnished any evidence that is probative of the historical, ongoing, or current condition of groundwater quality underlying the Site. Without such evidence, Plaintiff's claims against CMC must fail.

J. Any Potential Allocation of Liability to CMC is *De Minimus*

Dr. Kopania, opined that there is no evidence VOC releases from the Site have impacted groundwater. (RT 8/13/12, 6755:22-24). If however, any liability should attach to CMC, it is at most *de minimus* and subject to allocation in a variety of ways as discussed in Defendants' Trial Brief on Common Issues.

Any potential allocation should reflect that the Site is not one of the 13 major impact sites determined by Dr. Waddell and identified in his plume map. (RT 5/17/12, 3030:1-11; Ex. 10146-53). Any contaminated groundwater flowing from the Site would be captured only by one of the District's six planned extraction wells, EW-4. (RT 5/17/12, 3029:11-18; Ex. 10000-43). However, the PCE found in the shallow aquifer under the former Crucible Site is coming from AC Products (RT 8/13/12, 6853:9-15) and to the extent VOC releases from the Site may be impacting groundwater they would primarily be captured and treated by AC Products' extraction well P-03. (RT 4/26/12, 1633:21-1634:2). In addition, the 1,4-Dioxane is from Vista Paint. (RT 4/26/12, 1612:16-1613:5; RT 8/13/12, 6780:25-6781:1). To the extent CMC has any liability for TCA, DCE, or TCE, such liability must be at least partly allocated to Vista Paint based upon Dr. Kopania's opinion regarding Vista Paint (RT 8/13/12, 6774:1-3) and the fact that two of the one-time groundwater sampling wells were located on Vista Paint's property (Ex. 406-1, 7, and 9).

IV. CONCLUSION

In conclusion, the District's evidence failed to prove the essential elements of its first, second and sixth causes of action against CMC. Specifically, the District failed to present evidence establishing its prima facie case that the 2100 E. Orangethorpe Site or CMC's operations at the 2100 E. Orangethorpe Site caused or threatened to cause groundwater contamination or pollution which required the District to incur remediation or clean-up costs. For those reasons, and for all the reasons explained above, this Court finds in favor of CMC on the District's first, second and sixth causes of action.

V. [PROPOSED] CONCLUSIONS OF LAW

CMC hereby incorporates by reference as if fully set forth herein the elements of each of Plaintiff's causes of action and the causation standard applicable to its claims as set forth

in the Defendants' Closing Trial Brief on Common Issues.

Based on the foregoing, the Court makes the following conclusions of law as follows:

1. CMC is entitled to judgment in its favor on the District's first, second and sixth causes of action.

2. In this phase of trial, the District seeks to recover from Defendants, including CMC, the costs actually incurred by the District in connection with the North Basin Groundwater Protection Project ("NBGPP"). The purpose of the NBGPP is to remediate groundwater in the North Basin that is contaminated with volatile organic compounds ("VOCs"), perchlorate, and nitrate.

3. At trial, the District, through its expert, alleged that CMC was responsible for releasing into groundwater the VOCs tetrachloroethylene ("PCE"), trichloroethylene ("TCE"), 1,4-Dioxane, 1,1,1-trichloroethane ("1,1,1-TCA"), the latter of which latter of which the District alleged degraded in groundwater into 1,1-dichloroethane ("1,1-DCE"). The District further alleged that the District actually incurred costs in containing or cleaning up groundwater contamination caused by CMC.

4. Of the chemicals of concern listed above, the only one which the District proved by a preponderance of the evidence which was used during CMC's business operations at the 2100 E. Orangethorpe Site was 1,1,1-TCA.

5. The District failed to prove by a preponderance of the evidence that CMC released any chemical of concern at the 2100 E. Orangethorpe Site. The mere presence of soil contamination at the 2100 E. Orangethorpe Site found in the 1984 is not sufficient evidence that CMC caused soil contamination, or that this soil contamination impacted groundwater flowing under or from the Site. CMC owned and occupied the 2100 E. Orangethorpe Site from October 1983 until May 1985.

6. The District failed to prove by a preponderance of the evidence that soil contamination at the 2100 E. Orangethorpe Site has impacted groundwater. The District has not provided the Court with any groundwater data from the 2100 E. Orangethorpe Site. The only testing performed by the District relating to the 2100 E. Orangethorpe Site were off-site

one-time grab samples, which Dr. Waddell admitted are not useful in establishing the movement of solvent in groundwater. The Court finds that these one-time grab samples do not establish that the 2100 E. Orangethorpe Site impacted groundwater.

7. Even assuming that the 2100 E. Orangethorpe Site has impacted groundwater, the District has not incurred response costs as a result of any groundwater contamination from the 2100 E. Orangethorpe Site. Project manager David Mark testified that the goal of the NBGPP is to treat groundwater contaminant concentrations that are more than 5 times the maximum contaminant level ("MCL") or reporting level. Extraction well EW-4 is the Extraction Well drilled by the District which testimony established is directly downgradient of the 2100 E. Orangethorpe Site. There is no groundwater underlying the 2100 E. Orangethorpe Site or downgradient that exceeds the MCL by more than 5 times that will be captured by EW-4.

8. The District has not incurred any costs in containing threatened groundwater contamination from the 2100 E. Orangethorpe Site. The District has not undertaken soil remediation at the 2100 E. Orangethorpe Site.

9. Given the District's failure to prove it has incurred costs in cleaning up contamination or pollution caused by CMC, the District is not entitled to any contribution or indemnity from CMC toward the District's costs in connection with the NBGPP.

The District is not entitled to declaratory relief against CMC.

Respectfully submitted,

DATED: September 7, 2012 DONGELL LAWRENCE FINNEY LLP

By 

Paul D. Rasmussen
Attorneys for Defendant and Cross-Defendant
CRUCIBLE MATERIALS CORPORATION

Docket No. 04CC00715

PROOF OF SERVICE THROUGH LEXIS NEXIS FILE & SERVE

I, Desiree Caudillo, declare:

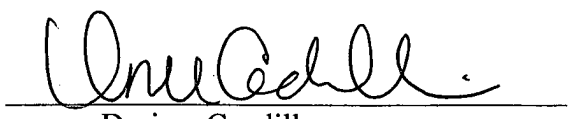
I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 707 Wilshire Boulevard, 45th Floor, Los Angeles, CA 90017-3609. On the date set forth below, I served a copy of the foregoing document(s) described as follows:

DEFENDANT CRUCIBLE MATERIALS CORPORATION'S CLOSING BRIEF AND [PROPOSED]FINDINGS OF FACTS AND CONCLUSIONS OF LAW

served by:

[**X**] Posting it directly on the Lexis Nexis File & Serve website, https://fileandserve.lexisnexis.com at approximately **4:30 p.m.** local time.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed on September 7, 2012 at Los Angeles, California.



Desiree Caudillo

1497-001/72229